

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 96-15
(December 4, 1996)

**Reserve Police Officer Serving as Volunteer
Hearing Officer in Justice Court**

Issue

May a “limited reserve” police officer serve as a justice court volunteer hearing officer?

Answer: Yes, as to small claims cases; no, as to criminal and civil traffic cases.

Facts

A justice court hearing officer hears criminal, traffic and small claims cases. The hearing officer, who serves without compensation, is enrolled in a community college reserve police academy, and, upon graduation, will become a certified police officer. Until then, the hearing officer is considered a “limited reserve officer,” meaning that the officer must be accompanied on police work by a fully certified officer. The justice court is in a separate area from that of the police department of which the hearing officer is a limited reserve officer.

Discussion

In Opinion 94-03, we opined that a justice of the peace may not be a member of a sheriff’s posse because Canon 1 requires judges to uphold the independence of the judiciary, and Canon 2 insists that judges avoid the appearance of impropriety and promote public confidence in an independent judiciary. We also advised in Opinion 94-10 that even court staff must avoid off-duty volunteer police work if it involves activities likely to create a conflict of interest or the appearance of a partial judiciary or staff. Finally, we concluded in Opinion 95-06 that judges should be sensitive to public perceptions of partiality in the context of a hearing officer married to a city council member.

The fact that a judicial hearing officer is a volunteer does not change our opinion in this instance. Whether a hearing officer is paid or unpaid makes no difference in the need to maintain independence and impartiality of the decision maker. We believe there must be a separation between law enforcement and the judiciary in fact and in appearance. Whether a hearing officer is a member of a police force outside the court’s precinct does not lessen the need for vigilance in maintaining a court that is truly independent.

In addition, whether a hearing officer is a “limited reserve officer” or a fully certified police officer does not alter the requirement that the court maintain its independence. As we have advised before, there is a strong need to maintain a court that is independent of the parties coming before it. In criminal matters and in civil traffic matters, law enforcement

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officers are almost always involved. The public and individual defendants must have confidence that a judge does not belong to the other side's team. To retreat from this requirement would seriously impair the ability of the judiciary, as a separate branch of government, to carry out its duties independent of the litigants before it and free from the influence of the other branches of government.

There are no similar requirements, however, that would prevent a volunteer who is a member of law enforcement from hearing civil small claims cases. The commentary to Canon 2A states "the test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired." Small claims hearing officers are typically non-lawyers. We see no reason why a realtor, a carpenter, a retired military officer or a homemaker could serve as a small claims hearing officer, but a person who is a reserve law enforcement officer could not. Civil small claims cases generally do not involve law enforcement personnel or issues. If service is restricted to civil cases, we see no appearance of partiality.

We do not believe Opinion 95-08, which deals with an assistant attorney general serving as a pro tempore appellate judge, has application here. There, a major fear was that a person operating one day as an attorney and the next day as a judge would detract from the independence and impartiality of the judiciary.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 1, 2 and 2A (1993).

Other References

Arizona Judicial Ethics Advisory Committee, Opinions [94-03](#) (Feb. 18, 1994); [94-10](#) (Aug. 3, 1994); [95-06](#) (March 31, 1995); [95-08](#) (May 3, 1995).